SB Civil S.T. Rev. Petition No.685/1999

Date of Order: **09th May, 2006.**

PRESENT

HON'BLE MR.JUSTICE BHAGWATI PRASAD

Mr.Suresh Shrimali for the petitioner/s
Mr.Vijay Kumar for the respondent/s.

This revision petition is filed against an order of the tax board .

The proceedings were initiated by the assessing authority when the man incharge of the goods Kuldeep Singh made a prayer on his own volition that the proceedings be concluded on that day itself. In his reply he submitted that he is not in a position to submit ST 40. In reply he also admitted that he is admitting his guilt and on that day the assessing authority found that the offence under section 38(5) of the Rajasthan Sales Tax Act, 1994 (hereinafter referred to as 'the Act of 1994') was made out and no further enquiry was required and, therefore, the penalty was imposed. The tax board has concluded that presence of ST 40 was not necessary because a letter accompanying the papers showed that the goods were for sale. This is not a correct approach. The purport of ST 40 is that tax is required to be paid by

the person to whom the goods are sent. The liability of the person to whom the goods are sent arises only after ST 40 was sent and then in turn ST 41 is issued showing that he has paid the tax. Thus it is a clear case of evasion of tax.

The order of the tax board and that of the assessing authority are set aside being violative of Section 78(5) of the Act of 1994 and, therefore, the penalty is sustained.

(BHAGWATI PRASAD), J.

L.George

SB Civil Rev. Petition No.192/2006

Date of Order: 09th May, 2006.

PRESENT

HON'BLE MR.JUSTICE BHAGWATI PRASAD

Mr. D.S.Udawat for the petitioner/s

Heard.

No case for interference is made out. The land continues to be agricultural , which is subject matter of suit. Hence the petitioners' have the remedy of approaching the appropriate court. The revision petition is dismissed.

(BHAGWATI PRASAD), J.

L.George

SB Civil Revision Petition No.04/2001

Date of Order: 08th December,2005.

PRESENT

HON'BLE MR.JUSTICE B.PRASAD

Mr.Suresh Shrimali for the petitioner.
Mr.R.M.Mankad for the respondent.

BY THE COURT:

Heard.

In view of the amended provisions of S.115 C.P.C. and judgment of Hon'ble Supreme Court in Shiv Shakti Co-op. Housing Society vs. Swaraj Developers (AIR 2003 SC, 2434), the revision petition is dismissed as not maintainable.

However, the petitioner shall be at liberty to seek any other appropriate remedy as may be available to him.

(BHAGWATI PRASAD), J.

L.George

SB Civil Rev. Petition No.281/2005

Date of Order: 11th May, 2006.

PRESENT

HON'BLE MR.JUSTICE BHAGWATI PRASAD

Mr.Yashwant Mehta for the petitioner/s

Heard.

There is no force in the revision petition. The same is dismissed.

(BHAGWATI PRASAD), J.

L.George

SB Civil Rev. Petition No.356/2005

Date of Order: **11th May, 2006.**

PRESENT

HON'BLE MR.JUSTICE BHAGWATI PRASAD

Mr.H.R.Soni for the petitioner/s
Mr.P.S.Bhati for the respondent/s.

Heard learned counsel for the parties.

This revision petition is against the dismissal of the application under Order 7 Rule 11 C.P.C. As far as Order 7 Rule 11 C.P.C. is concerned as it stands in the CPC there is no application in the circumstance of the case. As far as the question of arbitration clause is concerned that can be waived by both the parties. If that is done then it cannot be construed as to be an absolute legal bar. That being the position the order is not likely to be interfered.

The learned counsel states that he has made a composite prayer. In the application there was a prayer under Section 8 of the Arbitration Act 1996 (hereinafter referred to as 'the Act of 1996'). If that is so, the trial court will consider that application in the light of prayer relating to Section 8 of the Act of 1996.

The revision petition is meritless and hence dismissed. The matter is sent back to the trial court. If the learned counsel raises the question regarding the prayer in relation to Section 8 of the Act of 1996, the trial court will consider the same in accordance with law.

(BHAGWATI PRASAD), J.

L.George

SB Civil Rev. Petition No.140/2002

Date of Order: 12th May, 2006.

PRESENT

HON'BLE MR.JUSTICE BHAGWATI PRASAD

Mr.Arun Bhansali for the petitioner/s
Mr.Vinay Jain for the respondent/s.

The trial is said to have proceeded and is at the level of defendant's evidence. In that view of the matter, nothing more is required to be done in relation to the orders in question. The trail court will proceed with the determination of question in accordance with law. The revision petition is disposed off.

(BHAGWATI PRASAD), J.

L.George

SB Civil Rev. Petition No.518/2002

Date of Order: **12th May, 2006.**

PRESENT

HON'BLE MR.JUSTICE BHAGWATI PRASAD

Mr.Arun Bhansali for the petitioner/s
Mr.Vinay Jain for the respondent/s.

Heard.

The trial is said to have proceeded and is at the level of defendant's evidence. In that view of the matter, nothing more is required to be done in relation to the orders in question. The trail court will proceed with the determination of question in accordance with law. The revision petition is disposed off.

(BHAGWATI PRASAD), J.

L.George

SB Civil Rev. Petition No.46/2005

Date of Order: **22nd May, 2006.**

PRESENT

HON'BLE MR.JUSTICE BHAGWATI PRASAD

Mr.Jitendra Chopra for the petitioner/s.
Mr.Usman Ghani for the respondent/s.

Since the order of paying court fees have not been complied with, the court had no option but to refuse the suit. There is no force in the revision petition the same is dismissed.

(BHAGWATI PRASAD), J.

L.George

SB Civil Rev. Petition No.298/2004

Date of Order: **22nd May, 2006.**

PRESENT

HON'BLE MR.JUSTICE BHAGWATI PRASAD

Mr.Jitendra Chopra for the petitioner/s.
Mr.Vinay Jain for the respondent/s.

The Court has ordered for deposit of court fees advalorum on the price of the land. The learned counsel for the petitioner submitted that the land is revenue land. If it was revenue land, as contended by the learned counsel, then a suit would not have been maintained in civil court. Since the question involved related to the title the order of the civil court is not seen defective in any way.

The revision petition is dismissed.

(BHAGWATI PRASAD), J.

L.George

SB Civil Rev. Petition No.1159/2002

Date of Order: **22nd May, 2006.**

PRESENT

HON'BLE MR.JUSTICE BHAGWATI PRASAD

Mr.B.N.Kalla for the petitioner/s.
Mr.B.R.Mehta for the respondent/s.

It is a matter which relates to the substitution of the legal representatives. The application has been dismissed as belated . In the facts and circumstances of the case the delay should not come in the way of the applicant. The trial court will consider the application on merits, condoning delay in filing the application. The revision is disposed off accordingly.

(BHAGWATI PRASAD), J.

L.George

SB Civil Rev. Petition No.415/2005

Date of Order: **22nd May, 2006.**

PRESENT

HON'BLE MR.JUSTICE BHAGWATI PRASAD

Mr.R.R.Nagori for the petitioner/s.
Mr.C.S.Kotwani for the respondent/s.

Since the revision is not maintainable the learned counsel withdraws the same for taking appropriate remedy.

Ordered accordingly.

(BHAGWATI PRASAD), J.

L.George

SB Civil Rev. Petition No.298//2006

Date of Order: **22nd May, 2006.**

PRESENT

HON'BLE MR.JUSTICE BHAGWATI PRASAD

Mr.Mukesh Sharma for the petitioner/s.

Since the revision is not maintainable the learned counsel withdraws the same for taking appropriate remedy.

Ordered accordingly.

(BHAGWATI PRASAD), J.

L.George

SB Civil Rev. Petition No.299//2006

Date of Order: **22nd May, 2006.**

PRESENT

HON'BLE MR.JUSTICE BHAGWATI PRASAD

Mr.Mukesh Sharma for the petitioner/s.

Since the revision is not maintainable the learned counsel withdraws the same for taking appropriate remedy.

Ordered accordingly.

(BHAGWATI PRASAD), J.

L.George

SB Civil S.T.Rev. Petition No.681/2002

Date of Order: 22nd May, 2006.

PRESENT

HON'BLE MR.JUSTICE BHAGWATI PRASAD

Mr.Sangeet Lodha for the petitioner/s.

Separate sale of the packing material being not established, the incident of the tax cannot be said to have been attracted. In that view of the matter there is no force in the revision petition the same is dismissed.

(BHAGWATI PRASAD), J.

L.George

SB Civil S.T.Rev. Petition No.256/2006

Date of Order: 22nd May, 2006.

PRESENT

HON'BLE MR.JUSTICE BHAGWATI PRASAD

Mr.Sangeet Lodha for the petitioner/s.

Heard.

The question sought to be raised are questions of fact. The machinery which is in operation is imbibed in the factory premises. Therefore, it cannot be said to be a movable property and packing material has not been established to be separately sold. Therefore, the question of tax cannot be attracted. The question cannot be reopened as the same are questions of fact. There is no force in the revision petition the same is dismissed.

(BHAGWATI PRASAD), J.

L.George

SB Civil Rev. Petition No.1016/2003

Date of Order: 22nd May, 2006.

PRESENT

HON'BLE MR.JUSTICE BHAGWATI PRASAD

Mr.S.L.Jain for the petitioner/s.
None appears for the respondent despite service.

Heard.

Learned counsel for the petitioner relies on Mukh Ram vs. Hardeep Singh (RLW 1986, 137). No satisfaction has been recorded by the trial court that the respondent judgment debtor has no capacity to pay the decretal amount. Unless this is recorded merely on assertion of the judgment debtor that he is not in a position to pay the decretal amount he should not have been sent to jail. The order impugned is set aside. The matter is remanded back to the trial court for fresh consideration in accordance with law.

(BHAGWATI PRASAD), J.

L.George

SB Civil Misc. Appeal No.665/2006

Date of Order: **23rd May, 2006.**

PRESENT

HON'BLE MR.JUSTICE BHAGWATI PRASAD

Mr.Anil Bachhawat for the appellant/s.

A lady getting a leg fractured has to be considered that she has lost something very valuable. She loses the grace of her walk. The learned counsel for the appellant urges that there is only fracture of femur and Rs.80, 000/- has been awarded. The victim is a girl of 18 years. Loss of steadiness of limp would definitely cause such a prolonged pain in the mind of the girl that she would not be able to attain that kind of gestures and gait which she would have had otherwise in her life. The award of compensation of Rs.80,000/- in such circumstances is not considered to be one which shocks the conscience. Rather it appears to be less. Learned counsel further urged that it is a case of contributory negligence. The accident has taken place in the thickly populated area around Surajpole at Udaipur where a transport bus is not required to be moving with that speed , rather they should adopt such ways where traffic is not as dense as at Surajpole, Udaipur. That being the position, negligence is of the

transport vehicle. There is no force in the appeal, the same is dismissed.

(BHAGWATI PRASAD), J.

L.George

SB Civil Misc. Appeal No.294/2006

Date of Order: **23rd May, 2006.**

PRESENT

HON'BLE MR.JUSTICE BHAGWATI PRASAD

Mr.Sandeep Saruparia for the appellant/s.

Heard.

This is a case for enhancement of award. The deceased was a young man of 19 years. His dependency has been computed as Rs.15,000/- per year because no proof of his regular income was given by the claimant. In that view of the matter no case for enhancement is made out. There is no force in the appeal, the same is dismissed.

(BHAGWATI PRASAD), J.

L.George

SB Civil Misc. Appeal No.613/2006

Date of Order: **23rd May, 2006.**

PRESENT

HON'BLE MR.JUSTICE BHAGWATI PRASAD

Mr.Manoj Bhandari for the appellant/s.
Mr.S.K.Sankhla for Mr.Rajesh Panwar for the respondent/s.

Heard.

The requirement of proving negligent act has been taken away by the provisions of Section 163 A (2) of the Motor Vehicles Act 1988. Therefore, assertion of the learned counsel for the Insurance Company that the negligence has not been established is without foundation. There is no force in the appeal, the same is dismissed.

(BHAGWATI PRASAD), J.

L.George

SB Civil Misc. Appeal No.555/2006

Date of Order: **23rd May, 2006.**

PRESENT

HON'BLE MR.JUSTICE BHAGWATI PRASAD

Mr.R.K.Singhal for the appellant/s.

Heard.

In view of the fact that only restraint against the petitioner is for alienation, no interference is called for . The appeal is dismissed. However, the trial is expedited.

(BHAGWATI PRASAD), J.

L.George

SB Civil Misc. Appeal No.665/2006

Date of Order: **23rd May, 2006.**

PRESENT

HON'BLE MR.JUSTICE BHAGWATI PRASAD

Mr.Anil Bachhawat for the appellant/s.

A lady getting a leg fractured has to be considered that she has lost something very valuable. She loses the grace of her walk. The learned counsel for the appellant urges that there is only fracture of femur and Rs.80, 000/- has been awarded. The victim is a girl of 18 years. Loss of steadiness of limp would definitely cause such a prolonged pain in the mind of the girl that she would not be able to attain that kind of gestures and gait which she would have had otherwise in her life. The award of compensation of Rs.80,000/- in such circumstances is not considered to be one which shocks the conscience. Rather it appears to be less. Learned counsel further urged that it is a case of contributory negligence. The accident has taken place in the thickly populated area around Surajpole at Udaipur where a transport bus is not required to be moving with that speed , rather they should adopt such ways where traffic is not as dense as at Surajpole, Udaipur. That being the position, negligence is of the

transport vehicle. There is no force in the appeal, the same is dismissed.

(BHAGWATI PRASAD), J.

L.George

SB Civil Misc. Appeal No.588/2002

Date of Order: **23rd May, 2006.**

PRESENT

HON'BLE MR.JUSTICE BHAGWATI PRASAD

Mr. Pradeep Choudhary for the appellant.
Mr.R.S.Chundawat for the respondent.

Heard.

The present appeal is filed by the husband against the decree granted by the court of Additional District Judge No.2, Chittorgarh in Civil Misc. Case No.65/1999 dated 12th October , 2001. Both the lawyers appearing for the parties submit that since no stay was granted by this court the respondent wife has already contracted a second marriage and she has not been able to appear in the court because she is carrying. Both the lawyers agree that now the parties have reconciled their fate and are not interested in restoration of marital tides. The only concern of the appellant husband is that the husband may not be required to pay money according the customary system of mutual divorce. Both the parties agree that they will not demand any such money.

In view of the fact that the parties are not likely to live together, it would not be proper to disturb the divorce granted by the court below. However, as agreed by both the learned counsel, none of the parties would ask for customary money which is payable in accordance with the divorce. The decree of divorce is confirmed. The appeal is accordingly dismissed.

(BHAGWATI PRASAD), J.

L.George